



No. 34.

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# Supreme Court of the United States.

OCTOBER TERM, 1897.

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A. B. ROFF, PLAINTIFF IN ERROR,

vs.

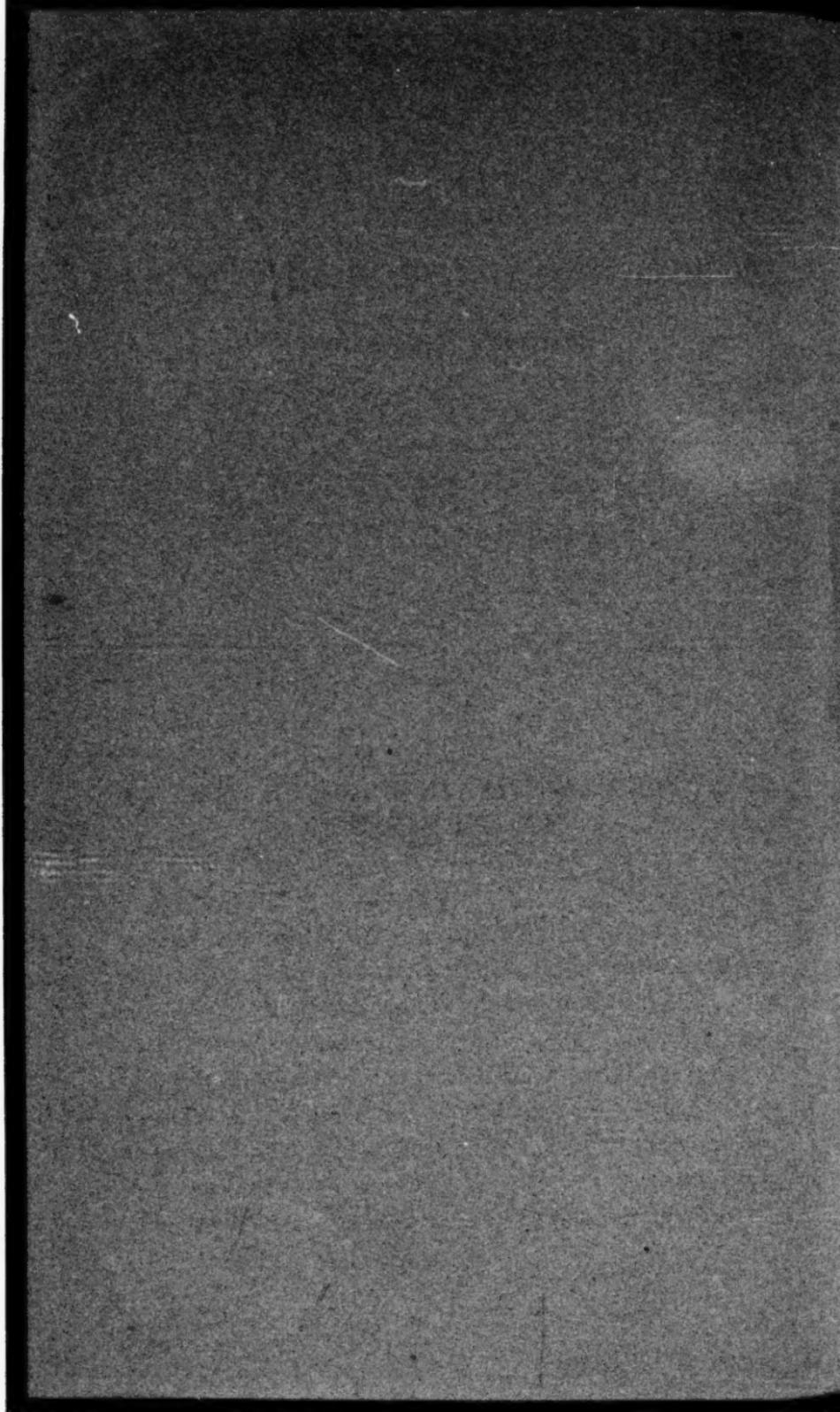
LOUISA BURNETT, AS ADMINISTRATRIX OF R. C. BURNETT,  
DECEASED,

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BRIEF FOR PLAINTIFF IN ERROR ON PETITION  
FOR REHEARING.

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C. L. HERBERT,  
*Counsel for Plaintiff in Error.*



IN THE  
**Supreme Court of the United States.**  
**OCTOBER TERM, 1897.**

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*No. 34.*

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A. B. ROFF, PLAINTIFF IN ERROR,

*vs.*

LOUISA BURNEY, AS ADMINISTRATRIX OF B. C. BURNEY,  
DECEASED.

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**BRIEF FOR PLAINTIFF IN ERROR ON PETITION  
FOR REHEARING.**

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On account of the construction placed upon the opinion rendered by this honorable Court in this cause, on November 29, 1897, by the attorneys representing the Chickasaw tribe of Indians in the United States courts in the Indian Territory, in answer to applications for citizenship, appealed to said courts from the decision of the Dawes commission, under act of Congress of 1896, this petition for rehearing is presented.

The attorneys for the Chickasaws contend that the opinion

rendered herein is conclusive of the question that Indian citizenship is a personal and not a valuable and vested right, and therefore the same may be withdrawn by the legislature of the tribe, regardless of the property rights of the citizen, which rights, under the treaties, are inseparable from the right of citizenship; and in support of this petition we would most respectfully call the Court's attention to the following treaties between the United States Government and the Choctaw and Chickasaw Indians, and the following portions of the Chickasaw constitution and laws touching the question involved.

The latter portion of article 1 of the treaty of 1855, between the United States and the Choctaws and Chickasaws, reads:

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; *so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, That no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.*" (11 Stat., 612.)

Article 2 of the same treaty reads:

"A district for the Chickasaws is hereby established, bounded as follows, to wit: Beginning on the north bank of Red river, at the mouth of Island bayou, where it empties into Red river, about twenty-six miles on a straight line, below the mouth of False Wachitta; thence running a northwest-  
erly course along the main channel of said bayou, to the

junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue rivers, as laid down on Captain R. L. Hunter's map; thence northerly along the eastern prong of Island bayou to its source; thence due north to the Canadian river; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red river, and thence down Red river to the beginning: *Provided, however,* If the line running due north, from the eastern source of Island bayou, to the main Canadian, shall not include Allen's or Wapanacka academy, within the Chickasaw district, then an offset shall be made from said line, so as to leave said academy two miles within the Chickasaw district north, west and south from the lines of boundary." (11 Stat., 612.)

Article 4 of the same treaty reads:

"The government and laws now in operation and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district, until the Chickasaws shall *adopt a constitution and enact laws, superseding, abrogating, or changing the same.* And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws." (11 Stat., 612.)

Article 7 of the same treaty reads:

"So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits; excepting, however, all persons with their property, who are not by birth, adoption or otherwise citizens or members of either the Choctaw or

Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States agent, assisted if necessary by the military, with the following exceptions, *viz*: Such individuals as are now, or may be in the employment of the Government, and their families—those peacefully traveling or temporarily sojourning in the country or trading therein, under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes."

It will be seen that under the treaty of 1855 the Chickasaws were granted the right to establish and maintain a government of their own when they should, pursuant to such treaty, adopt a constitution and enact laws for that purpose, and, pursuant to such treaty, in the year 1856 the Chickasaws did adopt a constitution, section 11 of which reads:

"SECTION 11. The legislature shall have the power, by law, to admit, or adopt any person to citizenship in this nation, except a negro or descendant of a negro: *Provided, however*, That such an admission or adoption shall not give a right further than to settle and remain in the nation and to be subject to its laws."

Pursuant to this treaty and this constitution thus adopted, on the 17th day of October, 1856, the legislature of the Chickasaw nation, at its first term, passed an act as follows:

"AN ACT granting citizenship to the heirs of Wm. H. Bourland.

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation*, That the right of citizenship is hereby granted

to the following-named children and nephews of Wm. H. Bourland: Nancy, Amanda, Matilda, Gordentia and Run Hannah. Approved October 17, 1856. C. Harris, governor."

After the treaty of 1855 and the adoption of the Chickasaw constitution of 1856, and the passage of the act of October 17, 1856, adopting the Bourland heirs as citizens of the Chickasaw nation, the United States Government, on April 28, 1866, entered into a new treaty with the Choctaw and Chickasaw Indians, article 38 of which reads:

"Every white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw." (14 Stat., 779.)

Article 11 of the same treaty provides for surveying and dividing the lands of the Choctaws and Chickasaws in severalty; the establishment of a land office. Article 12 provides for the mapping and surveying of the lands. Article 13 provides for notices to be published to those interested to the end that they may appear at the land office and examine such maps, etc., and articles 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, all pertain to the allotment of the Choctaw and Chickasaw lands and the granting to each member of the tribe his interest therein in severalty; and article 26 of said treaty reads:

"The right here given to Choctaws and Chickasaws, re-

spectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such." (11 Stat., 777.)

Pursuant to the treaty of 1866, the Chickasaw nation, on August 16, 1867, adopted a constitution, section 7 of which, under the head of "General Provisions," reads:

"All persons, other than Chickasaws, who have become citizens of this nation, by marriage or adoption, and have been confirmed in all their rights as such by former conventions, and all such persons as aforesaid, who have become citizens by adoption by the legislature, or by intermarriage with the Chickasaws, since the adoption of the constitution of August 18, A. D. 1856, shall be entitled to all the rights, privileges and immunities of native-born citizens. All who may hereafter become citizens, either by marriage or adoption, shall be entitled to all the privileges of native-born citizens, without being eligible to the office of governor." (See page 15, Constitution, Laws, and Treaties of the Chickasaws, as published in 1878.)

Under the head of "Bill of Rights," in the same constitution, on page 5 of the same book, we find section 14, which reads:

"The legislature shall pass no retrospective law, or any law impairing the obligation of contracts."

On November 9, 1866, the legislature of the Chickasaw nation passed an act confirming the treaty of 1866 between the United States and the Choctaws and Chickasaws, section 1 of which reads:

*"Be it enacted by the legislature of the Chickasaw nation, That whereas a treaty was concluded at Washington city on the 28th of April, 1866, by commissioners duly appointed*

on the part of the Chickasaws, Choctaws, and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby give its consent to and confirm the said treaty and amendments made by the Senate of the United States."

On October 7, 1876, the legislature passed another act with reference to the Bourland heirs in language as follows:

"AN ACT granting citizenship to the heirs of William H. Bourland.

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation*, That the right of citizenship is hereby granted to the following-named children and nephews of William H. Bourland: Amanda, Matilda, Gordentia, and Run Hannah. Approved Oct. 7th, 1876. B. F. Overton, governor." (Constitution, Laws, and Treaties of Chickasaws, page 76, as published in 1878.)

In the complaint of plaintiff in error filed in the court below it is alleged that this act of October 7, 1876, is but a confirmation of the act of October 17, 1856, adopting the heirs of William H. Bourland as citizens of the Chickasaw nation. In effect, it is alleged that this act is a declaratory statute.

Long after the treaty of 1866 and the adoption of the Chickasaw constitution pursuant thereto, in 1867, and the passage of the declaratory statute by the Chickasaw legislature in 1876, and on October 11, 1883, the legislature of the Chickasaw nation passed an act which reads:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation* That the right of citizenship granted to the following-named children and nephews of Wm. H. Bourland: Amanda Matilda, Gordentia and Run Hannah,

approved October 7, 1876, the same is hereby repealed and annulled.

*"SECTION 2. Be it further enacted That the governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation and that this act take effect from and after its passage."*

In construing the last-named act of the Chickasaw legislature, this honorable Court stated :

"Now, according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature.

*"The citizenship which the Chickasaw legislature could confer, it could withdraw. The only restriction on the power of the Chickasaw nation to legislate in respect to its internal affairs is that such legislation shall not conflict with the Constitution or laws of the United States, and we know of no provision of such Constitution or laws which would be set at naught by the action of a political community like this in withdrawing privileges of membership in the community once conferred. The Chickasaw legislature, by the second act, whose meaning is clear, though its phraseology may not be beyond criticism, not only repealed the prior act, but canceled the rights of citizenship granted thereby, and further directed the governor to remove the parties named therein and their descendants beyond the limits of the nation. This act was not one simply taking effect as of the date of its passage, and then withdrawing rights admitted to have been theretofore legally granted, but was retroactive in its scope, and purported to annul and destroy all that has ever been admitted to be done in respect to the matter. Whether any rights of property could be taken away by such subsequent act need not be considered. It is enough to hold that all personal rights founded on the mere status thus created by the prior act fell when that status was destroyed."*

If it be true that the right of Chickasaw citizenship is a personal and not a valuable and vested right, then the language of this Court, indicating that the Chickasaw legislature had the right to withdraw and abrogate Chickasaw citizenship is unquestionably true; but we must respectfully submit that under the treaty of 1866, articles 26 and 38, above referred to, and under the constitution of the Chickasaw nation of 1867, that he who acquired Chickasaw citizenship by legislative adoption or by intermarriage, not only became a member of the tribe of Chickasaw Indians, but became a tenant in common with the balance of the tribe in the lands of the Chickasaw Indians held, in common with the Choctaw Indians and situated in the Choctaw and Chickasaw nations, and that to destroy the right of citizenship is a destruction of the right to occupy and use the lands as a tenant in common with the balance of the tribe.

It is a destruction of his right to take his portion of the land in severalty when the lands are divided in accordance with the treaty of 1866, or the more recent treaty of the Choctaws and Chickasaws, entered into by their legislatures in 1897. We contend that the right of Chickasaw citizenship and the right of property and the right to allotment are inseparable rights, and that the destruction of the right of citizenship absolutely destroys the right of property, a vested right; that the two rights cannot be separately treated, and we do not understand from the opinion of this Court that it was its intention to destroy any property right of the plaintiff in error, acquired by virtue of his Chickasaw citizenship, but simply to destroy a personal right. It is true the plaintiff in error alleges in his complaint that on October 13, 1883, the Chickasaw legislature passed the act

above referred to, wherein it attempted to repeal the acts of the legislature of 1859 (1857) and October 7, 1876, and to disclaim, renounce, and repudiate the citizenship of the Bourland heirs, and of the plaintiff in error acquired thereunder, in the manner alleged in the complaint, and to deny the plaintiff any right as a member of the tribe of Chickasaw Indians or as a citizen of the Chickasaw nation, and that ever since the passage of said act the Chickasaw government, and all of the courts and officials thereof, have refused to recognize this plaintiff as a member of the tribe of Chickasaw Indians, and that ever since said date all the courts of said Chickasaw government have refused to entertain jurisdiction of any controversy between the plaintiff and a member of the tribe of Chickasaw Indians, and that they do yet refuse to entertain jurisdiction of such controversy.

It was the purpose of plaintiff in error in that complaint to allege a dual citizenship, and by showing that the Chickasaw courts were not open to him for the redress of a grievance between himself as a member of the tribe and another member of the tribe, that the United States court, under the statutes then in force, had jurisdiction of the controversy between him and the defendant in error, who is alleged to be a Chickasaw Indian by blood. This complaint further alleges that the children and nephews of said William H. Bourland, by reason and by virtue of said act of the Chickasaw legislature, became and were and ever since said year of 1857 have been members of the tribe of Chickasaw Indians and citizens of said nation, and as such were and ever since said date have been entitled to all the rights, privileges, and immunities of a Chickasaw Indian by

blood guaranteed unto him by the Constitution and laws of the United States, the constitution and laws of said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians.

It further alleges that about the 11th day of November, 1867, according to the laws, customs, and usages of said tribe of Chickasaw Indians and of said Chickasaw government, he (A. B. Roff) was duly and legally married to the said Matilda Bourland, adopted by the said act of said legislature as a citizen of said nation and a member of said tribe as aforesaid, and that by reason and by virtue of said intermarriage with said Matilda Bourland under the Constitution and laws of the United States, the constitution of said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of said Chickasaw government and entitled to all the rights, privileges, and immunities of a Chickasaw citizen by blood. (R., p. 2.)

It is true that the complaint does not contain a copy of article 26 of the treaty of 1866, or article 38 of the same treaty, or section 7 of the constitution of the Chickasaws of 1867, or the act of the legislature of the Chickasaws of November 9, 1866, ratifying and confirming the treaty of 1866; but it does allege in general terms that the right of the heirs of William H. Bourland, acquired by act of the legislature of 1857, made them members of the tribe of Chickasaw Indians, and as such they were and ever since said date have been entitled to all the rights, privileges, and

immunities of a Chickasaw Indian by blood as guaranteed unto him by the Constitution and laws of the United States, the constitution and laws of the said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians; that plaintiff in error married Matilda Bourland in accordance with the laws, customs, and usages of said tribe of Chickasaw Indians and said Chickasaw government, and by virtue thereof, under the Constitution and laws of the United States, the constitution and laws of the said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of said Chickasaw government, and entitled to all the rights, privileges, and immunities of a Chickasaw Indian by blood.

It will be seen that prior to the treaty of 1866 the status of an adopted Chickasaw Indian and one who acquires his citizenship by intermarriage with a member of the tribe are entirely different to the status of a Chickasaw Indian since the treaty of 1866. The constitution of the Chickasaws of 1856, section 11 of which is quoted above, confers upon the adopted Chickasaw a right only to reside in the Chickasaw nation; but when the Government of the United States treated with the Chickasaws and Choctaws in 1866 they required of them an express stipulation, as contained in article 38 of said treaty, that the white person who has married into the tribe and resides in the Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation in all

respects as though he was a native Choctaw or Chickasaw, and in article 26 of the same treaty it required these tribes of Indians by express stipulation to give to the intermarried Chickasaw or Choctaw, or to the adopted Chickasaw or Choctaw, the same right of allotment as granted to the native Choctaw or Chickasaw, and we take it that the right thus granted to the intermarried or adopted citizen by the treaty is a valuable and vested right, and after it has once attached it cannot be divested by legislation or judicial decree. It is not simply a personal right to which there is no value attached, but it is a right upon which, or by virtue of which, the citizen acquires a vested right in property as a tenant in common with the balance of the tribe, and the vested right to take his portion of the land in severalty when such lands are divided among the members of his tribe, and on account of the treatment of the Indian tribes in refusing to recognize the treatatory and vested rights of the intermarried and adopted Indian, the Congress of the United States provided by an act passed in 1896 (see—Stat., page —) that the commissioners of the United States to the five civilized tribes of Indians, known as the Dawes commission, "is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be admitted and enrolled;

*Provided, however,* That such application shall be made to such commissioners within three months after the passage of this act, the said commission shall decide all such applications within 90 days after the same shall be made. That in determining all such applications

said commission shall respect all the laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rules, usages and customs of each of said nations or tribes; *and provided further* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and every person who shall claim to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or that citizens, who may within three months from and after the passage of this act, desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days after the application thereof."

"In the performance of such duties said commission shall have power and authority to administer oaths, to issue processes for and compel the attendance of witnesses, and to send for persons and papers and all depositions and affidavits and other evidence in any form whatsoever heretofore taken, where the witnesses giving said testimony are dead, or now living beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud and wrong, Rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes." *Provided*, That if the tribe or any person be aggrieved with the decision of the tribe's authorities or commission provided for in this act, it or he may appeal from such decision

to the United States district court: *Provided, however,* That the appeal shall be taken within sixty days, and the judgment of the court shall be final; that the said commission, at the expiration of six months, cause a complete roll of citizenship of each of said nations to be made up from their records and add thereto the names of citizens whose right may be conferred under this act and said rolls shall be and are hereby made the rolls of citizenship of said nations or tribes, subject to the determination of the United States courts ... provided herein. The commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as a final judgment of the duly constituted authorities. And said commission shall also make a roll of freedmen entitled to citizenship in said tribes and shall include their names in the list of members to be filed with the Commissioner of Indian Affairs."

Under this act of Congress above quoted all *bona fide* members of the tribe of Chickasaw or Choctaw Indians, who acquired their membership or citizenship by legislative adoption or by intermarriage, have had the right to apply to the Dawes commission to have their names enrolled as members of the tribe to which they belong, and this commission had the right to pass upon their application; and if the evidence showed that they were members of the tribe in accordance with the laws and treaties, then the commission would enroll their names as members of such tribe; otherwise the application was denied, and upon a denial of such application the applicants had the right under this law to appeal to the United States court in the Indian Territory

and there present his application for the decision and adjudication of such court, and it is on account of the language employed in the opinion written in this case which suggests to the minds of the attorneys representing the Chickasaw nation that the citizenship of A. B. Roff by virtue of the act of 1883, being but a personal right, was withdrawn by that act, and hence it is that it is agreed by counsel for defendant in error that any law or constitution of the Chickasaw nation or any treaty by the United States Government with the Chickasaws or Choctaws, which are generally referred to in the complaint filed in the court below, and not copied in full, may be considered by this honorable Court in determining whether or not the right of Chickasaw citizenship is a valuable and vested right or a personal right which can be withdrawn with impunity by the Chickasaw authorities in the absence of the consent of the United States Government, a party to the treaty, which evidently intended that the two should be protected in their acquisition of rights of citizenship and rights of property in the Chickasaw nation.

To our minds there can be no question but that the right of Chickasaw citizenship, under the treaties and under the constitution above quoted and the laws of the Chickasaw nation, is a vested and valuable right, and carries with it a property right, which is inseparable from the right of citizenship, and that the destruction of the right of Chickasaw citizenship *ipso facto* is a destruction of the right of property granted to the intermarried and adopted Chickasaw citizen by the terms of the treaty of 1866 and confirmed by the constitution of the Chickasaws of 1867; but if it be admitted that the right of citizenship thus acquired by the plaintiff in error and his wife, who, although

the record does not disclose the fact, died long prior to the act of 1883, can be withdrawn by the Chickasaw legislature, we would respectfully call this Court's attention to the Chickasaw constitution of 1867, quoted above, which reads:

"The legislature shall pass no retrospective law, or any law, impairing the obligation of contracts."

Then what did the Chickasaws mean by this section of the Constitution? Evidently it was intended that the legislature of the Chickasaw nation could not pass any retroactive law. In defining the word "retrospective" and "retroactive" it is said that retroactive or retrospective means affecting what is past; operating upon a past event or transaction. Retrospective is the more common. Any statute which takes away or impairs vested rights acquired under existing laws, or creates a new law, imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed must be treated as retrospective. (Anderson's Dictionary of Law, page 897, and authorities cited.)

So it will be seen that not only was the act of 1883 of the Chickasaw legislature contrary to and in violation of the terms of the treaty of 1866, but it was directly in contravention with the Chickasaw constitution of 1867, and void for that reason. The treaties between the United States Government and the Choctaw and Chickasaw tribes must be treated as a statute of the United States, because none of them are effective until they are enacted into a law. It would, indeed, be a harsh and unjust decision to hold that the white man who came to the Chickasaw nation upon invitation of the Chickasaw Indians and pursuant to the treaty of 1866, and married a

member of the tribe in 1867, and acquired the right of citizenship by virtue of such marriage, and who has resided continuously in the Chickasaw nation since said date and acquired property rights and varied interests as the result of his energy and enterprise, by an act of the Chickasaw legislature is to be deprived of his right of citizenship and his right of property thus acquired upon such right of citizenship, and that, too, without the consent of the United States Government, a party to the treaty, under the terms of which he was granted a right of Chickasaw citizenship which carried with it all the rights of a member of the tribe of Chickasaw Indians by blood.

We do not contend that the opinion of this Court in this cause can be construed to mean that the plaintiff in error by reason of such act of the legislature is deprived of any right except a personal right; but for the reason that he alleged in general terms that his right of Chickasaw citizenship was acquired under the treaties made by the Chickasaws and Choctaws and under the constitution and laws of the Chickasaw nation. We take it that this honorable Court did not consider those portions of the treaties and the constitution of the Chickasaws which showed plainly that his right of Chickasaw citizenship and right of property are inseparable, and to withdraw and abrogate the one is an absolute destruction of the other. It may be, and as far as our researches have gone it is a fact, that this question of vested rights, as applied to the right of Chickasaw citizenship, was never before presented to this tribunal for its consideration and adjudication; but until recently questions of this kind were settled by decisions rendered by the Attorney-General of the United States, and in a letter writ-

ten by Attorney-General Garland and addressed to the Secretary of the Interior, dated January 23, 1889, a full discussion of the right of Cherokee citizenship is found, and in that letter the Attorney General says :

"I find from the papers submitted no authority to supervise this act of the Chief Justice, and I certainly think there is none. The right of citizenship is determined in this proceeding and becomes an adjudicated matter, and to leave it an open question for review by the legislature, or the counsel or other authority, would be to unsettle every right of citizenship established under that act.

"In this, as in all other things, there must be a termination and ending somewhere. A proper construction of this act is that the judgment of the Chief Justice rendered according to the terms of such act is the final determination and serves nothing for review. These principles of law would apply, if possible, with more force here than in ordinary cases, because it appears from the papers submitted that the Cherokee council invited the North Carolina Cherokees to come to the Cherokee nation and to become identified therein as citizens, and this plan of making them citizens was adopted to carry out the purpose of an invitation; and it therefore follows as a consequence, in reply to your second inquiry, that the Department of the Interior is under no laws to respect the decision of the Cherokee authorities in pursuance to the right of a commission established by the Cherokee legislature to inquire into the claims to citizenship of those persons adjudged to be citizens as designated in the first-named inquiry. The right of citizenship cannot be forfeited by legislative act, directly and indirectly, no more than can be the right of property." (19 Opinions Attorney General, page 233.)

The demurrer filed to the complaint in the court below admitted the citizenship of A. B. Roff, and he appealed this

case on the theory that because he was an intermarried member of the tribe of Chickasaw Indians that, under the acts of Congress of 1889 and 1890, the United States court in the Indian Territory had jurisdiction of a controversy between himself as a member of said tribe by intermarriage and a member of the tribe by blood; and it was this construction we sought to have this honorable Court place upon the act of Congress conferring jurisdiction upon the United States courts in the Indian Territory, and had not the slightest idea that this Court would hold that the Chickasaw authorities could and did withdraw the citizenship of A. B. Roff acquired in the manner above stated; and because the opinion of this honorable Court may be susceptible of more than one construction and may result in the inferior courts, whose duty it is to pass upon the rights of the plaintiff in error to Chickasaw citizenship, in the light of all the treaties and Chickasaw laws, this petition for rehearing is made to the end that the lower court may be advised as to the meaning of this honorable Court with reference to withdrawing the citizenship of A. B. Roff, which, under the treaty as presented in this case, is a withdrawal of his right of property, and for the foregoing reasons we most respectfully request that the decision of this Court as rendered on November 29, 1897, be set aside and a judgment now rendered in accordance with the treaties, constitution, and laws as copied in this brief, which, by the agreement of counsel, hereto attached, may be considered by this Court as true copies of the laws under which the rights of the plaintiff in error must be determined.

Respectfully submitted.

C. L. HERBERT,  
*Counsel for Plaintiff in Error.*

We, the undersigned attorneys for the defendant in error, Mrs. Louisa Burney, as administratrix of B. C. Burney, deceased, hereby accept service of a true copy of the foregoing brief and waive any further notice of service of same, and agree that the treaties and the portions of the Chickasaw constitution and laws as copied in said brief are correctly copied, and are the treaties, laws, and constitution that govern the questions involved in said cause, and agree that the petition for a rehearing in this case may be submitted to the Supreme Court of the United States, either upon written briefs or oral argument of the plaintiff in error without further notice to us, at any time said court will consider the same.

ROBERT H. WEST,

H. C. POTTERF AND

W. F. BOWMAN,

*Attorneys for Defendant in Error, Mrs.*

*Louisa Burney, Administratrix.*